IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 29898 of 2007(H)

OS.230/2006 of MUNSIFF COURT,ALUVA
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PETITIONER:

T.D. YOHANNAN, S/O. DEVASSY,
THALIAN HOUSE, KANOOR KARA, THEKKUMBHAGAM VILLAGE.

BY ADV. SRI.K.J.SAJI ISAAC
DR.ELIZABETH VARKEY

RESPONDENT:

C.A. PETER, S/O. ANTHROYOSE,
CHAKKEDATHU HOUSE, PUTHENKURISU KARA,
PUTHENKURISU VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.29898 of 2007

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Dated this the 9th day of October, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P5 order of the Munsiff, Aluva in I.A.No.2716 of 2006 in O.S.No.230 of 2006 on the ground that the plaintiff is not entitled to the relief prayed for in the suit and therefore, the suit should be dismissed as not maintainable.

2. A perusal of the Writ Petition would reveal that the defendant in the suit had filed a complaint under Section 138 of the Negotiable Instruments Act and it is pending before the concerned Magistrate Court. Meanwhile, the plaintiff has approached the civil court with a prayer for a declaration that no amount is due to the defendant from the plaintiff and the matter is now pending before the concerned court in the above mentioned suit. One cannot hold that such a declaratory suit cannot be filed at all. But it may be a fact that he may not be in

a position to get any relief in the backdrop of other developments.

3. Now after the amendment to Order 14 Rule 2 of C.P.C. unless it is only a pure question of law, one cannot compel a trial court to dispose of the matter as a preliminary issue at all. Admittedly, it appears from the pleadings available in this case that the whole question revolves round on a mixed question of fact and than on law. In such situation, there cannot be any direction to dispose of the matter on a preliminary issue.

4. So, though on different ground I hold that there cannot be a disposal on a preliminary issue, considering the nature of the contentions, I direct the court below for an expeditious trial and disposal of the matter, within a period of four months.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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